

Joe Lombardo  
Governor



Richard Whitley,  
MS  
Director



Cody Phinney,  
MPH  
Administrator

Ihsan Azzam,  
Ph.D., M.D.  
Chief Medical  
Officer

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## NOTICE OF PUBLIC HEARING

### **UMC EXPRESS CARE @ LAS, TERMINAL 1, 5757 WAYNE NEWTON BOULEVARD, LEVEL 2, LAS VEGAS, NV 89119, IS REQUESTING A VARIANCE, #749, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.**

NOTICE IS HEREBY GIVEN THAT UMC EXPRESS CARE @ LAS, Terminal 1, 5757 WAYNE NEWTON BOULEVARD, LEVEL 2, LAS VEGAS, NV 89119, has requested a variance from Nevada Administrative Code (NAC) 459.556 Administrative controls: Minimum exposure techniques; use of portable or mobile equipment, sections 459.556.1(c),(d) and NAC 459.556.2.

A public hearing will be conducted on September 1, 2023, at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held online and at physical locations, listed below.

#### **Physical Locations:**

Southern Nevada Health District (SNHD)  
Red Rock Trail Rooms A and B  
280 S. Decatur Boulevard; Las Vegas, Nevada 89107

Nevada Division of Public and Behavioral Health (DPBH)  
Hearing Room No. 303, 3rd Floor  
4150 Technology Way; Carson City, Nevada 89706

[Click here to join the meeting online](#)

*Please Note: If you experience technical difficulties connecting online, please call into the meeting to participate by phone.*

#### **Join by Phone:**

1-775-321-6111  
Phone Conference ID Number: 196 838 95#

UMC EXPRESS CARE @ LAS, Terminal 1, 5757 WAYNE NEWTON BOULEVARD, LEVEL 2, LAS VEGAS, NV 89119, is requesting a variance from NAC 459.556.1(c),(d) and 459.556(2) which states, in relevant part:

NAC 459.556 Administrative controls: Minimum exposure techniques; use of portable or mobile equipment. (NRS 459.201)

1. Procedures and auxiliary equipment designed to minimize exposure to the patient and personnel commensurate with obtaining the needed diagnostic information must be utilized, including the following:

- (c) Except as otherwise provided in paragraph (d), portable or mobile equipment may be used only for:
- (1) Examinations where it is impractical to transfer the patient to a stationary radiographic installation; and
  - (2) Its designed purpose, as specified by the manufacturer; and
- (d) Portable or mobile equipment may be used in lieu of stationary equipment for a period of not more than 90 days while the facility is awaiting the delivery of new stationary equipment or the repair of registered stationary equipment if the following conditions are satisfied:
- (1) The portable or mobile equipment has been registered and the appropriate fee has been paid in accordance with NAC 459.154 and 459.161; and
  - (2) The registrant has requested, in writing, and been granted authorization from the Division to use the portable or mobile equipment in lieu of stationary equipment. Such a request must include, without limitation:
    - (I) The date of installation of the portable or mobile equipment; and
    - (II) The expected duration of the use of the portable or mobile equipment.
2. The Division shall grant an extension of an authorization to use portable or mobile equipment in lieu of stationary equipment if the registrant:
- (a) Requests the extension at least 10 days before the expiration of the original authorization; and
  - (b) Demonstrates that the extension is justified by submitting documentation indicating that the delivery or repair of the stationary equipment was delayed.

The authority of the State Board of Health to consider and grant a variance from the requirements of a regulation is set forth at NRS 439.200 and NAC 439.200 – 439.280.

Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:

Secretary, State Board of Health  
Division of Public and Behavioral Health  
4150 Technology Way, Suite 300  
Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner's presentation.

This notice has also been posted at the following locations:

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (DPBH), 4150 TECHNOLOGY WAY, CARSON CITY, NV

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE  
<http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/>

NEVADA PUBLIC NOTICE WEBSITE  
<https://notice.nv.gov/>

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**DEPARTMENT OF  
HEALTH AND HUMAN SERVICES**

 **NEVADA DIVISION of PUBLIC  
and BEHAVIORAL HEALTH**



Cody Phinney,  
MPH  
*Administrator*

Ihsan Azzam,  
Ph.D., M.D.  
*Chief Medical  
Officer*

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## MEMORANDUM

**DATE:** August 3, 2023  
**TO:** John Pennell, Chair, State Board of Health  
**FROM:** Cody Phinney, Administrator, Division of Public and Behavioral Health  
**RE:** Variance Case #749, UMC Express Care @ LAS

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**SUBJECT: CASE #749, UMC EXPRESS CARE @ LAS, VARIANCE TO NEVADA ADMINISTRATIVE CODE (NAC) 459.556, ADMINISTRATIVE CONTROLS: MINIMUM EXPOSURE TECHNIQUES; USE OF PORTABLE OR MOBILE EQUIPMENT, SECTIONS 459.556(1)(D) AND (2).**

### Staff Review

For the reasons stated below and with the conditions specified, DPBH staff recommend the State Board of Health approve Case #749, UMC Express Care @ LAS, request for a variance to NAC 459.556(1)(d) and (2).

NEVADA ADMINISTRATIVE CODE (NAC) 459.556(1)(c), (d), and (2) state, in relevant parts,

1. Procedures and auxiliary equipment designed to minimize exposure to the patient and personnel commensurate with obtaining the needed diagnostic information must be utilized, including the following:

(c) Except as otherwise provided in paragraph (d), portable or mobile equipment may be used only for:

(1) Examinations where it is impractical to transfer the patient to a stationary radiographic installation; and

(2) Its designed purpose, as specified by the manufacturer; and

(d) Portable or mobile equipment may be used in lieu of stationary equipment for a period of not more than 90 days while the facility is awaiting the delivery of new stationary equipment or the repair of registered stationary equipment if the following conditions are satisfied:

(1) The portable or mobile equipment has been registered and the appropriate fee has been paid in accordance with NAC 459.154 and 459.161; and

(2) The registrant has requested, in writing, and been granted authorization from the Division to use the portable or mobile equipment in lieu of stationary equipment. Such a request must include, without limitation:

(I) The date of installation of the portable or mobile equipment; and

(II) The expected duration of the use of the portable or mobile equipment.

2. The Division shall grant an extension of an authorization to use portable or mobile equipment in lieu of stationary equipment if the registrant:

(a) Requests the extension at least 10 days before the expiration of the original authorization; and

(b) Demonstrates that the extension is justified by submitting documentation indicating that the delivery or repair of the stationary equipment was delayed.

### **Summary of Variance Request:**

Variance applicant UMC Express Care @ LAS ("Applicant") submitted a request for variance from the requirements of NAC 459.556(1)(d) and (2) on May 2, 2023. The Applicant is requesting approval to use a portable x-ray machine in lieu of a stationary x-ray machine for examinations while they are under contract with the airport to provide medical services.

### **Intent of Regulation:**

The intent of NAC 459.556(1)(c), (d) and (2) are to protect the health and safety of radiologic technologist and patients by limiting the use of portable or mobile X-ray machines to situations where patients cannot be transferred to a stationary X-ray machine.

The reasons for limiting the use of portable or mobile x-ray machines include:

- Portable and mobile x-ray machines are intended for bedside use when a patient cannot be transported to a designated imaging room with a permanently installed imaging system. Examples include intensive care, critical care, emergency, and surgical patients.
- Portable and mobile x-ray machines produce poorer quality images as compared to stationary machines due to several factors such as: the x-ray tube is less stable, inconsistent measurement of the distance and angle between the x-ray tube and the x-ray film, and limited imaging settings. These factors may lead to blurred or poor-quality images, which will have to be retaken. Repeat imaging increases overall radiation exposure to the patient.
- Portable and mobile x-ray machines do not protect technologists from radiation as well as properly installed stationary machines.

### **Degree of risk to public health or safety:**

The health risk is increased radiation exposure to patients.

### *Background information:*

The applicant started using a mobile x-ray machine in lieu of a stationary machine on Nov. 16, 2021. The applicant took over a contract with the airport to provide medical services. The previous contractor removed their stationary x-ray machine when the contract was turned over to the Applicant. The Applicant could not install a new stationary machine because of a change in guidelines for the design and construction of hospitals. The room needs to be larger to meet design criteria and the Applicant cannot remodel the airport. Since x-rays are being taken in a room that was set-up for a stationary x-ray machine with lead shielding in the walls and a protective barrier for technologists, there is adequate radiation protection for the technologists taking x-rays.

To ensure radiation exposure to patients are maintained as low as reasonably achievable the Applicant has committed to:

- Evaluate which examinations are suitable for portable x-ray machines.
- Determine which examinations will be sent off site to a stationary x-ray machine.
- Track all repeat images and review the data to ensure repeat images are kept at an acceptable level and implement corrective actions if needed.

RCP considers the determination of the types of examinations that should be performed using a portable or mobile x-ray machine to be a medical decision that should be made by the physician who prescribes the x-ray in consultation with the Applicant.

The Applicant has committed to implementing the above actions (see Attachment A).

Approval of the variance with these commitments will minimize the detriment to public health and safety to the extent practical.

**Exceptional and undue hardship:**

Strict application of 459.556(1)(c), (d) and (2), would require the Applicant to send patients to an imaging facility that has a stationary x-ray machine. Sending travelers who are seeking medical care to another facility would increase their cost of medical care and could create a hardship for out of state or foreign travelers. Providing x-ray services is part of the contract between the Applicant and the airport. Not being able to provide this service could result in a loss of the contract.

The circumstances associated with this variance are unique. When the Applicant took over an existing contract, they planned to install a stationary x-ray machine. However, due to a change in guidelines for the design and construction of hospitals, the room that previously housed a stationary x-ray machine needed to be larger to meet design criteria.

The Applicant images airport employees and travelers for health issues. The imaging volume is very low, around 1 to 2 patients per week.

Compliance with the regulation in this case is unduly burdensome given the Applicant has provided adequate protection for technologists, committed to taking actions necessary to maintain patient radiation exposures to levels that are as low as reasonably achievable, and compliance is likely to increase the cost of medical care to some patients and could create a hardship for out of state or foreign travelers.

Approval of this variance is not expected to affect other persons subject to the regulations.

**Staff Recommendation**

DPBH staff recommend the State Board of Health approve Case #749, UMC Express Care @ LAS, request for a variance to NAC 459.556(1)(d) and (2) with the condition that the Applicant continues to implement the commitments in attachment A.

*Impairment to the purpose of the regulation:*

Approval of the variance will result in increased radiation exposure to patients. However, implementation of the commitments in Attachment A, will reduce radiation exposures to patients to acceptable levels that are reasonably achievable.

**Public Comments:**

Notice of the hearing is scheduled to be posted at [the Division of Public and Behavioral Health website](#) and at the 4150 Technology Way Office in Carson City, NV 89706 by Aug. 17, 2023, by 9 a.m. The Division of Public and Behavioral Health is not aware of any objections to this variance by any local authorities, and no public comments have been received to date.

**Presenter:**

John Follette, Manager Radiation Control Program  
Division of Public and Behavioral Health  
Bureau Health Protection and Preparedness

**Attachments:**

- A. Applicant Commitments

NEVADA STATE BOARD OF HEALTH  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
4150 Technology Way, Suite 300  
CARSON CITY, NV 89706

**APPLICATION FOR VARIANCE**

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration  
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance  
(NAC 449, 457, 459 & 652)

Child, Family & Community Wellness  
(NAC 392, 394, 432A, 439, 441A, & 442)

Health Statistics, Planning,  
Epidemiology and Response  
(NAC 440,450B, 452, 453, 453A, & 695C)

Public Health & Clinical Services  
(NAC 211, 444, 446, 447, 583, & 585)

Date: 05/02/23

Name of Applicant: Becky Christensen

Phone: 702-383-2524

Mailing Address: 1800 West Charleston Blvd

City: Las Vegas State: NV Zip: 89102

We do hereby apply for a variance to \_\_\_\_\_ of the Nevada  
chapter/section NAC 459.556(1)(d) and 459.556(2)  
Administrative Code (NAC). (For example: NAC 449.204)

Title of section in question: Administrative Controls: Minimum exposure techniques

Statement of existing or proposed conditions in violation of the NAC:

This Application for Variance is to NAC.556(1)(d) and 459.556(2). The Administrative code states that portable or mobile equipment may be used in lieu of stationary equipment for a period of not more than 90 days while the facility is awaiting the delivery of new stationary equipment or the repair of registered stationary equipment if 2 conditions are satisfied. Since November 16, 2021, we have been utilizing a portable x-ray machine (03-03-0065-122) at this location since the x-ray room in the suite is not large enough to install a stationary piece of equipment (no vendor makes a room that will fit). Additionally, even if a vendor made a stationary piece of equipment that fit in the space, the current FGI's prohibit us from having enough clearance around the equipment. Previously, we had received verbal directions from the State of NV, Radiation Control Program to register the portable machine as statewide use when I called to ask about this. Recently during an inspection of another site, it was stated to us that we needed to request this use in writing. In regards to NAC 459.556(2), for the reasons stated above, we would not be able to request an extension 10 days prior to the expiration of the original authorization. Our intent is to continue to utilize a portable radiographic machine at this location while we are contracted with the airport to provide services.

NEVADA STATE BOARD OF HEALTH  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
4150 Technology Way, Suite 300  
CARSON CITY, NV 89706

**APPLICATION FOR VARIANCE**

Date of initial operation (if existing): November 16, 2021

**ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:**

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
  - (a) There are circumstances or conditions which:
    - (1) Are unique to the applicant;
    - (2) Do not generally affect other persons subject to the regulation;
    - (3) Make compliance with the regulation unduly burdensome; and
    - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
  - (b) Granting the variance:
    - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
    - (2) Will not be detrimental or pose a danger to public health and safety.
2. Whenever an applicant for a variance alleges that he suffers or will suffer economic hardship by complying with the regulation, he must submit evidence demonstrating the costs of his compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

**Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supportive of your variance request.**

Statement of degree of risk of  
health

UMC Express Care @ LAS opened back in November of 2021. Since that time we have been utilizing a portable radiographic machine to complete the requested radiologic examinations (very low volume at 1-2 patients per week) that are ordered by the physician on-site. There is a very low degree of risk to the patient, the public or the healthcare worker due to the use of this portable equipment. The entire room is lead lined since it previously had a stationary unit that was removed prior to our arrival. Additionally, staff are able to stand behind the lead wall while exposing the patient and the control is permanently mounted per regulation. Lead shielding is provided to patients as needed. All aspects of ALARA are being followed.

NEVADA STATE BOARD OF HEALTH  
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**APPLICATION FOR VARIANCE**

**Please state in detail the circumstances or conditions which demonstrate that:**

1. An exceptional and undue hardship results from a strict application of the Regulation:

UMC Express care @ LAS is a very convenient way for travelers and airport employees to see a physician for any of their small health issues. Sometimes (rarely) the physician needs a radiologic examination to make a proper decision about the care of the patient. The imaging volume at this location is very low (approximately 1-2 patients per week). Without imaging capabilities being available, the physician would have to send the airport employees and travelers to another location.

2. The variance, if granted, would not:

- A. Cause substantial detriment to the public welfare.

All aspects of proper radiation protection to the public, patients and staff of the clinic have been verified by leadership of the facility and the State of Nevada, Radiation Control Program. Use of this portable machine does not cause undue harm to anyone if used per manufacturers guidelines. This is the case at the UMC Express Care @ LAS location.

- B. Impair substantially the purpose of the regulation from which the application seeks a variance.

I can only surmise the purpose of this regulation is to ensure that facilities are using techniques to minimize exposure to the public and healthcare workers. The use of a portable radiographic machine is certainly not ideal for the work-flow, but it does not increase exposure to the public or the healthcare workers if used according to manufacturers recommendations and by following ALARA (as low as (is) reasonably achievable". This means that we will make every reasonable effort to maintain exposures to ionizing radiation as far below the dose limits as practical, consistent with the purpose for which the licensed activity is undertaken, while taking into account the state of technology. The portable machine that is being utilized uses the latest technology in portable machines which helps to reduce the dose to the public and the healthcare workers.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

1. Legal description of property  
\_\_\_\_\_ concerned UMC Express Care @ LAS  
Terminal 1, 5757 Wayne Newton Blvd, Level 2  
Las Vegas, NV 89119
- \_ 2. General area identification map



NEVADA STATE BOARD OF HEALTH  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
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CARSON CITY, NV 89706

**APPLICATION FOR VARIANCE**

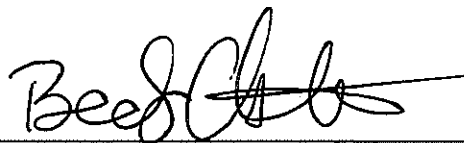
- 3. Plat map showing locations of all pertinent items and appurtenances
- 4. Well log (if applicable)
- 5. Applicable lab reports
- 6. Applicable engineering or construction/remodeling information
- 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

Please schedule this hearing during:

- The next regularly scheduled Board of Health meeting, regardless of location.
- The next scheduled meeting in Carson City.
- The next scheduled meeting in Las Vegas.

Signature:



Printed Name:

Becky Christensen

Title:

Director of Imaging

Date:

5-2-2023

NEVADA STATE BOARD OF HEALTH  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH  
4150 Technology Way, Suite 300  
CARSON CITY, NV 89706

**APPLICATION FOR VARIANCE**

**PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING  
ANY OF THE FOLLOWING METHODS:**

**MAIL TO:**

Lisa Sherych, Administrator  
Division of Public and Behavioral Health  
4150 Technology Way, Suite 300  
Carson City, NV 89706

**FAX:**

775-687-7570

**EMAIL:**

[DPBH@health.nv.gov](mailto:DPBH@health.nv.gov)